

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

Keith Adger Smyth,

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Civil Action No.: 0:13-cv-2862-RBH

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Plaintiff,

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v.

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**ORDER**

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Salvador Bianco,

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Defendant.

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Plaintiff Keith Adger Smyth (“Plaintiff”), proceeding *pro se*, filed this action pursuant to 42 U.S.C. § 1983 against Defendant Salvador Bianco (“Defendant”) on October 21, 2013. *See* Compl., ECF No. 1. On March 7, 2014, Defendant filed a motion for summary judgment. *See* Mot., ECF No. 36. Plaintiff filed a response in opposition to Defendant’s motion on March 17, 2014, *see* ECF No. 43, and supplemented his response on April 3, 2014, *see* ECF No. 47. The matter is before the Court for review of the Report and Recommendation (“R & R”) of United States Magistrate Judge Paige J. Gossett, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of South Carolina. *See* R & R, ECF No. 62. In the Report and Recommendation, the Magistrate Judge recommends the Court grant Defendant’s motion. *See id.* at 6.

The deadline to file objections to the R & R was October 3, 2014. To date, the Court has not received any objections to the R & R. However, on September 25, 2014, Plaintiff did file a motion to dismiss, indicating that he intended to “dismiss my case on the Defendant for now because I’m going to refile it or reopen the case later.” *See* ECF No. 64 at 1. Defendant timely filed a response in opposition to the motion, requesting that the Court adopt the Magistrate Judge’s R & R, as no objections were filed, and dismiss the matter with prejudice. *See* ECF No. 67 at 1. Defendant

argues that allowing Plaintiff to voluntarily dismiss the matter without prejudice would be inappropriate at this juncture on procedural and substantive grounds. *See id.* at 2.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

No party has filed objections to the Report and Recommendation. In the absence of objections to the Report and Recommendation of the Magistrate Judge, this Court is not required to give any explanation for adopting the recommendations. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). The Court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

The Court agrees with Defendant that allowing Plaintiff to voluntarily dismiss this matter without prejudice would be improper at this juncture, as Plaintiff did not make this motion until after Defendant filed a motion for summary judgment, which was fully briefed by the parties, and the Magistrate Judge issued her R & R. *See* Fed. R. Civ. P. 41(a). Therefore, it is **ORDERED** that Plaintiff’s motion to dismiss is **DENIED**.

Moreover, after a thorough review of the record in this case, the Court finds no clear error. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted and incorporated by reference. Therefore, it is **FURTHER ORDERED** that Defendant's motion for summary judgment is **GRANTED** and Plaintiff's complaint is **DISMISSED** with prejudice.

**IT IS SO ORDERED.**

s/ R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge

Florence, South Carolina  
October 15, 2014